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**49 CFR Parts 107, 171, and 173
Amendments to the Hazardous Materials
Program Procedures and Regulations;
Final Rule**

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Parts 107, 171, and 173**

[Docket No. HM-207; Amdts. 107-24; 171-12; 173-226]

RIN 2137-AC01

Amendments to the Hazardous Materials Program Procedures and Regulations**AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Final rule.

SUMMARY: The Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), enacted on November 18, 1990, amended the Hazardous Materials Transportation Act of 1975 (HMTA). RSPA is issuing this final rule to conform its regulations to certain provisions of the HMTUSA amendments.

This rule amends the regulations by increasing the maximum civil penalty that may be assessed for violations of the HMTA and the regulations issued under the HMTA, and by establishing a minimum civil penalty amount. This rule also adds new definitions, establishes standards and procedures for preemption and waiver of preemption determinations, and makes other changes consistent with the HMTUSA.

EFFECTIVE DATE: November 16, 1990.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Assistant Chief Counsel, or Mary Crouter, Senior Attorney, Hazardous Materials Safety & Research and Technology Law Division, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590, telephone: (202) 366-4400.

SUPPLEMENTARY INFORMATION:**I. Changes Effected by the Hazardous Materials Transportation Uniform Safety Act of 1990**

The Hazardous Materials Transportation Uniform Safety Act (HMTUSA; Public Law 101-615) was enacted on November 16, 1990. The HMTUSA amends the Hazardous Materials Transportation Act (HMTA; 49 app. U.S.C. 1801-1813) in many significant respects. The amendments addressed by this final rule include the following:

(1) Section 3 of the HMTUSA adds to or amends the definitions in the HMTA.

(2) Section 4(a) of the HMTUSA establishes a new preemption standard

for State, political subdivision, or Indian tribe requirements that concern certain covered subjects.

(3) Section 4(b) of the HMTUSA establishes a new preemption standard for State or Indian tribe designations of highway routes for the transportation of hazardous materials or any limitations or requirements with respect to such routes.

(4) Section 5 of the HMTUSA prohibits unlawful representations concerning compliance with the HMTA and the implementing regulations, or the presence of a hazardous material. It also prohibits unlawful tampering with placards or other markings, or with a package used for transporting hazardous materials.

(5) Section 9 of the HMTUSA removes the requirement that the Secretary publish a notice in the *Federal Register* when an application for renewal of an exemption is received.

(6) Section 10 of the HMTUSA allows the Secretary to determine those radioactive materials which may be moved on passenger-carrying aircraft.

(7) Section 12 of the HMTUSA provides for the assessment of civil penalties for violations of "orders" issued by the Secretary; increases the maximum civil penalty that may be assessed from \$10,000 to \$25,000, and establishes a minimum civil penalty of \$250; defines "acting knowingly" for purposes of assessing civil penalties for violations; and provides criminal penalties for knowingly violating 49 U.S.C. 1804(f) (unlawful tampering) or for willfully violating a provision of the HMTA, or an order or regulation issued under the HMTA.

(8) Section 13 of the HMTUSA codifies the preemption standard for State, political subdivision, or Indian tribe requirements contained in RSPA regulations governing the inconsistency ruling process, 49 CFR 107.201-107.211. This section also states that State, political subdivision, or Indian tribe requirements are preempted pursuant to 49 app. U.S.C. 1804(a)(4) (covered subjects) or 49 app. U.S.C. 1804(b) (highway routing); and provides for administrative preemption and waiver of preemption determination processes and judicial review of those determinations.

(9) Section 20 of the HMTUSA extends application of Federal, state, and local law to persons who, under contract to the Federal government, transport or cause to be transported or shipped, a hazardous material, or manufacture, repair, or test a package or container which is represented as qualified for use in the transportation of hazardous materials.

(10) Section 31 of the HMTUSA provides, with certain exceptions not relevant here, that the HMTUSA, including the amendments made by the HMTUSA, shall take effect on the date of enactment (November 16, 1990). Section 31 also states that any regulation or ruling issued before the date of enactment and any authority granted under such a regulation shall continue in effect according to its terms until repealed, amended, or modified by the Secretary of Transportation or a court of competent jurisdiction.

II. Public Participation

The final rule adopted today mirrors the statutory changes and makes other corresponding editorial and technical changes. Any editorial changes made to other provisions of the regulations have merely been made for consistency and clarity. Therefore, notice and comment procedures are "impracticable, unnecessary, or contrary to the public interest" within the meaning of section 4(b)(3)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B). Any delay necessitated by notice and comment procedures would be contrary to the public interest. For similar reasons, there is good cause for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). All interested parties have had notice of the relevant provisions of the HMTUSA since its enactment on November 16, 1990. In addition, it is impracticable to have regulations that are contrary to the HMTA as amended by the HMTUSA. Section 31 of the HMTUSA specifically provides that the amendments shall take effect on the date of enactment.

Other provisions of the HMTUSA, however, will require the Department to initiate rulemaking proceedings utilizing notice and comment procedures. Those provisions will be addressed at a later date.

III. Preemption

The HMTUSA made several significant changes to the preemption provisions of the HMTA.

Covered Subjects

Section 4 amended section 105 of the HMTA by adding new subsections (a)(4) (A) and (B) to preempt any requirement of a State, political subdivision thereof, or Indian tribe concerning the following subjects if the non-Federal requirement is not substantively the same as any provision of the HMTA or any Federal regulation issued under the HMTA:

(1) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

49 App. U.S.C. 1804(a)(4) (A) and (B).

In its legislative proposal to reauthorize the HMTA (See, July 11, 1989 letter from Samuel K. Skinner, Secretary of Transportation, to The Honorable Dan Quayle, President of the Senate, hereinafter referred to as the July 11, 1989 Letter), the Department of Transportation delineated these subject areas as "critical areas of hazardous materials transportation regulation" that should be Federally preempted, unless the non-Federal requirements are identical to the Federal requirements.

Congress agreed that these areas are important, and the new preemption standard was added to clarify the "relationship of Federal and non-Federal laws governing the transportation of hazardous materials. In certain areas that are critical to the safe and efficient transportation of hazardous materials, the bill preempts State and local requirements that are different from the HMTA or regulations issued thereunder." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 21 (1990). Congress stated that the "enforcement of consistent Federal, State, and local laws is the best way to assure the safe transportation of hazardous materials," and that the "subjects listed * * * are critical both to the safe transportation of hazardous materials and to the free flow of commerce." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 33 (1990).

Congress also stated that "[c]onflicting Federal, State, and local requirements pose potentially serious threats to the safe transportation of hazardous materials. Requiring State and local governments to conform their laws to the HMTA and regulations thereunder, with respect to the specific subjects listed in section 105(a)(4)(B), will enhance the safe and efficient transportation of hazardous materials, while better defining the appropriate roles of Federal, State, and local jurisdictions." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 34 (1990).

RSPA plans to define the new standard of "substantively the same" in a future rulemaking.

Highway Routing

Section 4 of the HMTUSA also amended section 105 of the HMTA to add a new subsection (b) to provide, with certain exceptions, that after the last day of the 2-year period beginning on the date of the issuance of the Federal standards for highway routing, no State or Indian tribe may establish, maintain, or enforce:

(i) Any highway route designation over which hazardous materials may or may not be transported by motor vehicles, or

(ii) Any limitation or requirement with respect to such routing, unless such designation, limitation, or requirement is made in accordance with the procedural requirements of the Federal standards and complies with the substantive requirements of the Federal standards.

49 App. U.S.C. 1804(b)(4).

RSPA is adding this new preemption standard to its regulations to mirror the statute. The HMTUSA requires Federal standards for States and Indian tribes to use in establishing, maintaining, and enforcing highway routes. These highway routing standards will be the subject of future rulemaking.

Standards for Preemption and Preemption Determination Process

Section 13 of the HMTUSA amends section 112 of the HMTA to provide that any requirement of a State, political subdivision, or Indian tribe is preempted if:

(1) Compliance with both the State or political subdivision or Indian tribe requirement and any requirement of this title or of a regulation issued under this title is not possible,

(2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of this title or the regulations issued under this title, or

(3) It is preempted under section 105(a)(4) or section 105(b) [Discussed above under "Covered Subjects" and "Highway Routing"].

49 App. U.S.C. 1811(a).

Until amended by section 13 of the HMTUSA, section 112 of the HMTA preempted any requirement of a State or political subdivision that was "inconsistent" with any requirement set forth in the HMTA or a regulation issued under the HMTA. The HMTA did not define "inconsistent" or provide any standards for determining what requirements were "inconsistent." By regulation, RSPA set forth two criteria it would consider in determining whether a non-Federal requirement was

inconsistent with the HMTA or the regulations:

(1) Whether compliance with both the non-Federal and Federal requirement is possible, and

(2) The extent to which the non-Federal requirement is an obstacle to the accomplishment and execution of the HMTA and the regulations issued thereunder.

49 CFR 107.209(c) (1) and (2).

These two criteria were originally established by Supreme Court decisions determining whether a conflict exists between a State and a Federal statute in areas where Congress has not completely foreclosed State regulation (*Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978); *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963); *Hines v. Davidowitz*, 312 U.S. 52 (1941)). In its proposal to reauthorize the HMTA, the Department of Transportation included these two standards, edited to reflect the proposed change in their use from advisory criteria to statutory preemption standards, July 11, 1989 Letter. In the HMTUSA, Congress adopted these standards proposed by the Department. The "two standards [adopted] are the same requirements that are currently codified in regulations relating to inconsistency rulings." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 49 (1990). Congress stated its intention to clarify the current preemption process "by more clearly identifying the standards against which a determination of preemption is made.

Those standards are now reflected in Court decisions and they are documented in the precedents established in administrative rulings issued by the Department." H.R. Rep. No. 444, Pt. 2, 101st Cong., 2d Sess. 25 (1990).

The previous criteria were considerations used by RSPA in making advisory inconsistency rulings, while the new statutory standards are to be used by RSPA (and the courts) in making legally binding preemption determinations. Thus, the first standard sets forth an affirmative statement of preemption if compliance with both the Federal and non-Federal requirements is not possible. The second standard sets forth an affirmative statement of preemption if the non-Federal requirement as applied or enforced creates an obstacle to the accomplishment and execution of the HMTA or the regulations thereunder. The third standard sets forth an affirmative statement of preemption if the non-Federal requirement is

preempted under amended sections 105(a)(4) or 105(b).

The first standard against which a non-Federal requirement may be compared is whether it is "possible" to comply with both the Federal and non-Federal requirements at the same time. Where "dual compliance" is not possible, then the non-Federal requirement will be preempted.

The second standard pertains to those non-Federal requirements that, "as applied or enforced," create an obstacle to the accomplishment and execution of the HMTA and regulations thereunder. This standard reflects RSPA's prior experience in issuing inconsistency rulings. Under the previous inconsistency ruling process, most of the rulings were issued without any knowledge on the part of RSPA as to whether there had been any enforcement of the non-Federal requirement. RSPA did not require an applicant to show that a non-Federal requirement had been enforced against the applicant before RSPA would entertain an application for a ruling. In fact, the potential application of a non-Federal requirement was sufficient for RSPA to issue a ruling.

The second standard requires an applicant for a ruling to demonstrate that the non-Federal requirement covers a particular person, entity, or situation as opposed to a purely hypothetical matter requiring an advisory opinion. As noted below, Section 13 of the HMTUSA also requires that any person who seeks a determination of preemption, whether administratively or judicially, must demonstrate that the non-Federal requirement "directly affects" the applicant. When this "standing" requirement is coupled with the "as applied or enforced" language of revised section 112, it is clear that the agency's determination under this standard will relate to those situations where the non-Federal requirement "applies" to the applicant and its circumstances or that the non-Federal requirement actually has been or is about to be enforced against the applicant.

The third standard of preemption applies to certain "covered subjects" pertaining to the Transportation of hazardous materials set out in amended section 105(a)(4)(B) and to "highway routing" matters which are described in amended section 105(b). Under this third Standard of preemption, a non-Federal requirement will be preempted as provided by the standards set forth in sections 105(a)(4)(A) and 105(b)(4), respectively.

Section 13 of the HMTUSA also amends section 112 of the HMTA by adding a new subsection (c) to provide

that any person, including a State, political subdivision thereof, or Indian tribe, directly affected by any requirement of a State, political subdivision, or Indian tribe, may apply to the Secretary of Transportation, in accordance with regulations prescribed by the Secretary, for a determination of whether that requirement is preempted by section 105(a)(4) or section 105(b) or section 112(a).

In order to improve the effectiveness of the advisory inconsistency ruling process that RSPA had established by regulation (49 CFR 107.203-107.211), the Department included in its HMTA reauthorization proposal an administrative preemption determination process that was subsequently adopted in Section 13 of the HMTUSA. Congress stated that the inconsistency ruling process is "advisory in nature only and has no binding effect on either States or political subdivisions thereof or on persons affected by requirements thereof." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 48 (1990). In making the change from an advisory process to the statutory preemption determination process requested by the Department, Congress stated that the "inconsistency ruling process has proven to be time-consuming, burdensome, and ineffective." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 48 (1990). Although the inconsistency ruling process was "initially conceived to provide an alternative to litigation, the process has failed to prevent or deter parties from resolving disputes in the courts." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 48 (1990). Thus, in the HMTUSA, Congress amended the HMTA to provide a preemption determination process to replace the existing advisory inconsistency ruling process.

As under the previous inconsistency ruling process, only the question of statutory preemption under the HMTA will be considered under the preemption determination process. A court might find a non-Federal requirement preempted for other reasons, such as statutory preemption under another Federal statute (e.g. the Federal Railroad Safety Act), preemption under State law, or preemption under the Commerce Clause and the Supremacy Clause of the U.S. Constitution because of an undue burden on interstate commerce.

To make the administrative preemption process more effective, the HMTUSA also provides that no applicant for an administrative determination may seek relief with respect to the same or substantially the same issue in any court until the Secretary has taken final action or until

180 days after filing of an application, whichever occurs first. The 180-day time limit "is intended to provide sufficient time for the Secretary to make a final determination of preemption based upon the criteria set forth in the bill.

Alternatively, if the Secretary fails to act within the 180-day period, the bill seeks to provide the expeditious and definitive resolution of preemption issues by allowing the affected party to proceed with any available judicial remedies." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 49 (1990).

Under the previous process, RSPA required that an applicant for an inconsistency ruling demonstrate how it was "affected" by the non-Federal requirement. RSPA returned applications for rulings where the applicant did not make the required demonstration. (See, e.g., February 26, 1986 letter from Alan I. Roberts, Director, Office of Hazardous Materials Transportation, to Mr. Lindsay Audin, Technical Director, Citizens Against Nuclear Trucking, stating "you have failed to demonstrate sufficiently how . . . [you] will be affected (adversely) . . .") The HMTUSA amended the HMTA to require that the applicant be a person "directly affected" by a non-Federal requirement. As it did under the previous process, RSPA will continue to require an applicant for a preemption determination to demonstrate how it is directly affected.

There is a need to avoid issuing such determinations in the abstract. For example, a citizens' group with no identifiable interest in the outcome should not be able to seek a determination of preemption with respect to a State or local requirement. However, a citizens' group representing residents of a community with local routing requirements may be directly affected and thus have a sufficient interest in the outcome to justify access to the administrative process. The local government itself would be directly affected in that the outcome would affect its ability to enforce its requirements.

The regulated industry could be directly affected if the requirements are applied to it or enforced against it. Thus, both the preemption standard ("as applied or enforced") and the preemption determination process ("directly affected") have language intending to codify this "standing" requirement. Section 13 of the HMTUSA also amends section 112 of the HMTA to provide that a State, political subdivision thereof, or Indian tribe may not levy any fee in connection with the regulation of hazardous materials

transportation that is not "equitable" and used for purposes related to hazardous materials transportation, including enforcement and the planning, development, and maintenance of an emergency response capability. Therefore, RSPA has included this provision in the rule to reflect this statutory requirement.

Section 13 of the HMTUSA amended section 112 of the HMTA by adding a new subsection (d) to retain the administrative waiver of preemption provision. The waiver of preemption provision previously contained in the HMTA has been amended to clarify that the Secretary has the discretion to waive preemption upon a determination that the statutory criteria have been met. In this final rule, RSPA is amending its existing procedures to be consistent with this amendment.

Section 13 of the HMTUSA amends section 112 of the HMTA to allow a party to a preemption or waiver of preemption determination proceeding to seek judicial relief in the appropriate Federal district court with respect to such a determination of preemption or waiver of preemption, but provides that such actions must be commenced within 60 days after a final decision. The final rule is consistent with this provision.

IV. Section-by-Section Analysis

Nomenclature and Editorial Amendments

On September 24, 1990, RSPA was reorganized. The title of the Director of the Office of Hazardous Materials Transportation (OHMT) was changed to Associate Administrator for Hazardous Materials Safety. This rule amends the regulations covered by this rule to make those nomenclature changes wherever appropriate. This rule also makes technical and editorial changes to correspond to the nomenclature amendments and the amendments discussed below.

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

Subpart A—General Provisions

Section 107.3 Definitions

This rule adds several new definitions that are set forth in the HMTUSA, and revises two of the current definitions contained in § 107.3.

(1) This rule adds a definition of "imminent hazard" to mean the existence of a condition which presents a substantial likelihood that death, serious illness, severe personal injury, or substantial endangerment to health, property, or the environment may occur

before the reasonably foreseeable completion of an administrative hearing or other formal proceeding initiated to abate the risks of those effects.

The HMTUSA amended the definition of "imminent hazard" that was contained in section 111 of the HMTA, to create a lower threshold for proving that an imminent hazard exists. The amendment also makes it clear that harm to property and the environment are situations which may be addressed when an imminent hazard exists.

(2) This rule adds a definition of "Indian tribe" consistent with the meaning given that term under section 4 of the Indian Self-Determination and Education Act (25 U.S.C. 450b). The HMTUSA added this definition to the HMTA.

(3) This rule revises the definition of "person" in § 107.3 to mean an individual, firm, copartnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, or government, Indian tribe, or agency or instrumentality of any government or Indian tribe when it offers hazardous materials for transportation in commerce or transports hazardous materials in furtherance of a commercial enterprise, but such term does not include (A) the United States Postal Service, or (B) for the purposes of sections 110 and 111 of the HMTA, any agency or instrumentality of the Federal Government.

The HMTUSA added this definition of "person" to the HMTA, to establish clearly the jurisdiction of the HMTA over governmental entities when they engage in the commercial transportation of hazardous materials.

(4) This rule revises the definition of "State" in § 107.3 to mean a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, or any other territory or possession of the United States designated by the Secretary; except that as used in section 121 of the HMTA, relating to uniformity of State registration and permitting forms and procedures, such term means a State of the United States and the District of Columbia.

The HMTUSA amended the definition of "State" that was contained in section 103 of the HMTA, to clarify that the jurisdiction of the HMTA extends to the Northern Mariana Islands, and territories or possessions of the United States designated by the Secretary. The Secretary has not designated any

additional territories or possessions to be subject to the HMTA.

(5) This rule adds a definition of "transports" or "transportation" to § 107.3 to mean any movement of property by any mode, and any loading, unloading, or storage incidental thereto. This definition is contained in section 103 of the HMTA, and RSPA believes it merits inclusion in the regulations to clarify for the public the scope of the HMTA and the regulations issued thereunder.

All other terms used in the regulations are used in accordance with their statutory definitions in the HMTA.

Subpart B—Exemptions

Section 107.109 Processing of Application

This final rule revises § 107.109(a) to remove the requirement that a notice be published in the Federal Register of applications received for renewal of exemptions. Section 9 of the HMTUSA amended section 107(a) of the HMTA to delete this requirement. A corresponding amendment is made to § 107.111.

Subpart C—Preemption

As discussed above under III. *Preemption*, RSPA is amending its existing regulations in Subpart C to reflect the amendments made by the HMTUSA. This rule amends the existing inconsistency ruling process in 49 CFR 107.203–107.211 and the existing non-preemption determination process in 49 CFR 107.215–107.225 by simply adapting them to reflect the amendments made by the HMTUSA. Thus, the new process for preemption determinations will be identical to the previous inconsistency ruling process, and the waiver of preemption process will be identical to the previous non-preemption determination process.

Section 107.201 Purpose and Scope

This section has been revised to reflect the new terminology of preemption and waiver of preemption instead of "inconsistent" and "not preempted."

Section 107.202 Standards for Determining Preemption

This new section is added to include the standards for preemption added to the HMTA by the HMTUSA, including the standards for covered subjects (49 App. U.S.C. 1804(a)) and highway routing (49 App. U.S.C. 1804(b)), and the standards in section 13 of the HMTUSA (49 App. U.S.C. 1811(a)). New § 107.202(c) reflects the statutory requirement (49 App. U.S.C. 1811(b)) that

a State, political subdivision, or Indian tribe may not levy any fee in connection with the regulation of hazardous materials transportation that is not equitable and used for purposes related to hazardous materials transportation, including enforcement and the planning, development, and maintenance of an emergency response capability.

Sections 107.203–107.221

These sections have been revised to reflect the new terminology of preemption and waiver of preemption in place of "inconsistent" and "not preempted."

Section 107.227 Judicial Review

This final rule adds a new § 107.227 to implement 49 U.S.C. 1811(e) as amended by section 13 of the HMTUSA. Section 107.227 allows a party to a preemption or waiver of preemption determination proceeding to seek judicial relief in the appropriate Federal district court with respect to such a determination of preemption or waiver of preemption, but provides that such actions must be commenced within 60 days after a final decision.

Subpart D—Enforcement

Section 107.299 Definitions

This rule removes the definition of "knowledge" or "knowingly" in § 107.299 to add a definition of "acting knowingly" consistent with section 12(a)(2) of the HMTUSA. The HMTUSA amended section 110 of the HMTA to define "acting knowingly" to mean a person has actual knowledge of the facts giving rise to the violation, or a reasonable person acting in the circumstances and exercising due care would have such knowledge. Because the HMTA did not previously define the word "knowingly," RSPA had defined "knowledge" or "knowingly" in § 107.299 as essentially a negligence standard. In the HMTUSA, Congress effectively adopted the Department's historic interpretation of the term "knowingly."

Section 107.311 Notice of Probable Violation

With respect to civil penalties, section 12(a) of the HMTUSA extended civil penalty sanctions to violations of orders issued by the Secretary. In issuing orders directing compliance with the HMTA or the regulations issued thereunder, the Secretary's only available avenue to enforce such orders was to commence a lawsuit. Congress believed that this avenue of enforcement was time-consuming and that the costly judicial action was burdensome and

contrary to the purposes of the HMTA. H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 46 (1990). Therefore, § 107.311 is amended to include civil penalty sanctions for violations of orders.

Section 107.329 Maximum Penalties

Section 12(a) of the HMTUSA also increased the amount of the maximum civil penalty that may be assessed, from \$10,000 to \$25,000 for each violation, and establishes a minimum civil penalty of \$250 for each violation. Thus, § 107.329 is amended to incorporate these two statutory changes.

Section 107.333 Criminal Penalties Generally

Section 12(b) of the HMTUSA amended section 110(b) of the HMTA concerning criminal penalties for violations of the HMTA. This rule revises § 107.333 to make the corresponding changes. Section 107.333 provides that a person who knowingly violates § 171.2(g), concerning unlawful tampering, or willfully violates a provision of the HMTA or an order or regulation issued under the HMTA shall be fined under title 18, United States Code, or imprisoned for not more than five years, or both.

Section 107.336 Limitation on Fines and Penalties

This new section is added to reflect the amendment made by section 4 of the HMTUSA, which added a new subsection 105(a)(4)(C) of the HMTA to provide that if a State, political subdivision, or Indian tribe assesses any fine or penalty determined by the Secretary to be appropriate for a violation concerning a subject listed in subparagraph (B) of section 105(a)(4), no additional fine or penalty may be assessed for such violation by any other authority. 49 U.S.C. 1804(a)(4)(C).

SUBCHAPTER C—HAZARDOUS MATERIALS REGULATIONS

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

Section 171.1 Purpose and Scope

In § 171.1, this final rule adds a new paragraph (c) to amend the scope of the Hazardous Materials Regulations (HMR) to provide that any person who, under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal government, transports, or causes to be transported or shipped, a hazardous material shall be subject to and comply with all provisions of the HMTA, all orders and regulations issued under the HMTA, and all other substantive and procedural

requirements of Federal, State, and local governments and Indian tribes (except any requirements that have been preempted), in the same manner and to the same extent as any person engaged in such activities is subject to such provisions, orders, regulations, and requirements.

Section 171.1(c) also extends the scope of the HMR to any person who, under contract to the Federal government, manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person as qualified for use in the transportation of hazardous materials. This rule is consistent with section 20 of the HMTUSA, which clarifies that Federal contractors are subject to the HMTA and the HMR and to the same State and local laws that apply to other shippers and carriers that are not operating pursuant to a contract with the Federal Government.

Section 171.2 General Requirements

This rule amends § 171.2 to add provisions for unlawful representation and unlawful tampering. Section 5 of the HMTUSA amended section 105 of the HMTA to prohibit misrepresenting that a package or container is safe, certified, or in compliance with relevant regulations, or that a hazardous material is present in a package or container if it is not.

With respect to tampering, section 5 of the HMTUSA provides that no person shall alter, remove, deface, destroy, or otherwise tamper with any marking, label, placard, or description on a document, or any package, container or vehicle used for the transportation of hazardous materials. Therefore, consistent with the HMTUSA, this rule adds § 171.2(f) to prohibit misrepresentation that a package or container is safe, certified, or in compliance with relevant regulations, or that a hazardous material is present when it is not. This rule also adds § 171.2(g) to prohibit a person from tampering with any marking, label, placard, or description in a document, or any package, container, or vehicle used for the transportation of hazardous materials.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

Section 10 of the HMTUSA amends section 106(b) of the HMTA to allow certain products containing minor radioactive components to be moved on aircraft without an exemption.

Therefore, provisions in §§ 173.4(b), 173.421-1(b)(2), and 173.421-2(d), requiring an exemption, have been removed to reflect this statutory change.

Rulemaking Analyses

Administrative Procedure Act

Because these amendments do no more than mirror statutory changes, notice and comment procedures are "impracticable, unnecessary, or contrary to the public interest" within the meaning of section 4(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B). Public comment is unnecessary because, in making these technical amendments to give effect to the new statute, RSPA is not exercising discretion in a way that could be affected by public comment. As a consequence, RSPA is proceeding directly to a final rule. For similar reasons, and to immediately implement Congressional mandates, there is good cause for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d).

Executive Order 12291 and DOT Regulatory Policies and Procedures

RSPA has determined that this rule is not major under Executive Order 12291 and is not significant under DOT's regulatory policies and procedures. (44 FR 11034; Feb. 26, 1979.) This rule will not have any direct or indirect economic impact because it does not alter any existing substantive regulations in such a way as to impose additional burdens. The cost of complying with existing substantive regulations is not being increased. Therefore, preparation of a regulatory evaluation is not warranted. Under DOT's regulatory policies and procedures, notice is not necessary because RSPA does not believe it would receive any meaningful comment.

Executive Order 12612

This final rule implements specific statutory mandates that affect the relationship between the Federal government and the States, and RSPA has no discretion in implementing these changes. Therefore, preparation of a Federalism assessment pursuant to Executive Order 12612 is not warranted.

Regulatory Flexibility Act

RSPA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

There are no information collection requirements contained in this final rule.

National Environmental Policy Act

RSPA has concluded that this final rule will have no significant impact on the environment and does not require the preparation of an environmental impact statement under the National Environmental Policy Act.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, parts 107, 171, and 173 of title 49, Code of Federal Regulations, are amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 is revised to read as follows:

Authority: 49 App. U.S.C. 1421(c); 49 App. U.S.C. 1653(d), 1655; 49 App. U.S.C. 1802, 1806, 1808-1811; 49 CFR 1.45 and 1.53.

§§ 107.103, 107.107, 107.109, 107.111, 107.113, 107.115, 107.119, 107.121, 107.123, 107.207, 107.219, 107.221 [Amended]

2. In 49 CFR part 107 subparts A-D remove the words "Director, OHMT" and add, in their place, the words "Associate Administrator for Hazardous Materials Safety" in the following places:

- (a) Section 107.103 (a), (c);
- (b) Section 107.107;
- (c) Section 107.109 (b), (c), (c)(2), (d), (e);
- (d) Section 107.111 (a), (c);
- (e) Section 107.113 (c);
- (f) Section 107.115 (a), (b), (c);
- (g) Section 107.119 (b), (c), (d), (e);
- (h) Section 107.121;
- (i) Section 107.123 (b);
- (j) Section 107.207 (a), (b);
- (k) Section 107.219 (a), (b), (c); and
- (l) Section 107.221 (a).

§§ 107.103, 107.105, 107.111, 107.123, 107.215 [Amended]

3. In 49 CFR part 107 subparts A-D remove the words "Office of Hazardous Materials Transportation" and add, in their place, the words "Associate Administrator for Hazardous Materials Safety" in the following places:

- (a) Section 107.103 (b)(1);
- (b) Section 107.105 (a)(1);
- (c) Section 107.111 (b)(1);
- (d) Section 107.123 (a); and
- (e) Section 107.215(b)(1).

§§ 107.5, 107.7, 107.117, 107.205, 107.217, 107.219, 107.221, 107.223, 107.301, 107.303, 107.305, 107.309, 107.335 [Amended]

4. In 49 CFR part 107 subparts A-I) remove the word "OHMT" each place it appears and add, in its place, the words "Associate Administrator for Hazardous Materials Safety" in the following places:

- (a) Section 107.5 (a), (b);
- (b) Section 107.7 (a), (c);
- (c) Section 107.117 (a);
- (d) Section 107.205 (a), (b), (c);
- (e) Section 107.217 (a), (b)(2), (c), (d), (e);
- (f) Section 107.219 (d);
- (g) Section 107.221 (d);
- (h) Section 107.223;
- (i) Section 107.301;
- (j) Section 107.303;
- (k) Section 107.305 (a), (b), (c), (d);
- (l) Section 107.309 (a), (b)(1); and
- (m) Section 107.335.

Subpart A—General Provisions

§ 107.3 [Amended]

5. Section 107.3 is amended by revising the introductory language, revising the definitions of "person" and "State" and adding new definitions in alphabetical order as follows:

§ 107.3 Definitions.

All terms defined in Section 103 of the Act are used in their statutory meaning. Other terms used in this part are defined as follows:

* * * * *

Imminent Hazard means the existence of a condition which presents a substantial likelihood that death, serious illness, severe personal injury, or substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion of an administrative hearing or other formal proceeding initiated to abate the risks of those effects.

Indian Tribe shall have the meaning given that term under section 4 of the Indian Self-Determination and Education Act (25 U.S.C. 450b).

* * * * *

Person means an individual, firm, copartnership, corporation, company,

association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, or government, Indian tribe, or agency or instrumentality of any government or Indian tribe when it offers hazardous materials for transportation in commerce or transports hazardous materials in furtherance of a commercial enterprise, but such term does not include:

(1) The United States Postal Service, or

(2) For the purposes of sections 110 and 111 of the Act (49 App. U.S.C. 1809-1810), any agency or instrumentality of the Federal Government.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, or any other territory or possession of the United States designated by the Secretary; except that as used in section 121 (49 App. U.S.C. 1819), relating to uniformity of State registration and permitting forms and procedures, such term means a State of the United States and the District of Columbia.

Transports or "transportation" means any movement of property by any mode, and any loading, unloading, or storage incidental thereto.

§ 107.9 [Amended]

6. In § 107.9(c), remove the words "Applications for inconsistency rulings and nonpreemption" and add, in their place, the words "Applications for preemption and waiver of preemption."

Subpart B—Exemptions

7. In Section 107.109 paragraph (a) is revised to read as follows:

§ 107.109 Processing of application.

(a) After an application for an exemption or renewal of an exemption is determined to be complete, the Associate Administrator for Hazardous Materials Safety docket the application and, for an application under § 107.103, publishes a notice in the *Federal Register* affording an opportunity for interested persons to comment. All comments received before the close of the comment period are considered before final action is taken on such an application.

8. In § 107.111 paragraph (d) is revised to read as follows:

§ 107.111 Party to an exemption.

(d) The Associate Administrator for Hazardous Materials Safety publishes in the *Federal Register* a notice of each application received under § 107.103, each initial determination made and each renewal granted under this section.

Subpart C—Preemption

9. In § 107.201, paragraphs (a) and (d) are revised to read as follows:

§ 107.201 Purpose and scope.

(a) This subpart prescribes procedures by which:

(1) Any person, including a State or political subdivision thereof or Indian Tribe, directly affected by any requirement of a State or political subdivision or Indian tribe, may apply for a determination as to whether that requirement is preempted under the section 105(a)(4), section 105(b), or section 112(a) of the Act or regulations issued thereunder, and

(2) A State or political subdivision or Indian tribe may apply for a waiver of preemption with respect to any requirement that the State or political subdivision or Indian Tribe acknowledges to be preempted by section 105(a)(4), section 105(b), or section 112(a) of the Act or regulations issued thereunder.

(d) Unless otherwise ordered by the Associate Administrator for Hazardous Materials Safety, an application for a preemption determination which includes an application for a waiver of preemption will be treated and processed solely as an application for a preemption determination.

10. Section 107.202 is added to part 107 to read as follows:

§ 107.202 Standards for determining preemption.

(a) Except as provided in subsection 105(b) (49 App. U.S.C. 1804(b)) and unless otherwise authorized by Federal law, any law, regulation, order, ruling, provision, or other requirement of a State or political subdivision thereof or an Indian tribe, which concerns the following subjects and which is not substantively the same as any provision of this Act or any regulation under such provision which concerns such subject, is preempted:

(1) The designation, description, and classification of hazardous materials.

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.

(3) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.

(5) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

(b) Except as provided in § 107.221 and unless otherwise authorized by Federal law, any requirement of a State or political subdivision or Indian tribe is preempted if—

(1) Compliance with both the State or political subdivision or Indian tribe requirement and any requirement under the Act or of a regulation issued under the Act is not possible,

(2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of the Act or the regulations issued under the Act, or

(3) It is preempted under section 105(a)(4) or section 105(b) of the Act (49 U.S.C. 1804(a)(4) or 1804(b)).

(c) A State or political subdivision thereof or Indian tribe may not levy any fee in connection with the transportation of hazardous materials that is not equitable and not used for purposes related to the transportation of hazardous materials, including enforcement and the planning, development, and maintenance of a capability for emergency response.

§ 107.203 [Amended]

11. Remove the caption "Inconsistency Rulings" that precedes § 107.203 and add in its place "Preemption Determinations."

12. Section 107.203 is amended by revising paragraphs (a), (b), and (c), and adding paragraph (d) to read as follows:

§ 107.203 Application.

(a) Any person, including a State, political subdivision, or Indian tribe, directly affected by any requirement of a State, political subdivision, or Indian tribe, may apply to the Associate Administrator for Hazardous Materials Safety for a determination of whether that requirement is preempted by section 105(a)(4) or 105(b) of the Act (49 U.S.C. 1804(a)(4) or 1804(b)) or 49 CFR 107.202(b). The Associate Administrator for Hazardous Materials Safety shall publish notice of the application in the *Federal Register*.

(b) Each application filed under this section for a determination must:

(1) Be submitted to Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001. Attention: Hazardous Materials Preemption Docket;

(2) Set forth the text of the State or political subdivision or Indian tribe requirement for which the determination is sought;

(3) Specify each requirement of the Act or the regulations issued under the Act with which the applicant seeks the State or political subdivision or Indian tribe requirement to be compared;

(4) Explain why the applicant believes the State or political subdivision or Indian tribe requirement should or should not be preempted under the standards of § 107.202; and

(5) State how the applicant is affected by the State or political subdivision or Indian tribe requirement.

(c) The filing of an application for a determination under this section does not constitute grounds for noncompliance with any requirement of the Act or any regulation issued under the Act.

(d) Once the Associate Administrator for Hazardous Materials Safety has published notice in the Federal Register of an application received under paragraph (a) of this section, no applicant for such determination may seek relief with respect to the same or substantially the same issue in any court until final action has been taken on the application or until 180 days after filing of the application, whichever occurs first. Nothing in § 107.203(a) prohibits a State or political subdivision or Indian tribe, or any other person directly affected by any requirement of a State or political subdivision thereof or Indian tribe, from seeking a determination of preemption in any court of competent jurisdiction in lieu of applying to the Associate Administrator for Hazardous Materials Safety under paragraph (a) of this section.

§ 107.207 [Amended]

13. In § 107.207(b)(1), remove the word "ruling" and add in its place the word "determination."

14. In § 107.209, the section heading and paragraphs (a) and (b) are revised, paragraph (c) is removed, and paragraphs (d), (e), and (f) are revised and redesignated as paragraphs (c), (d), and (e) as follows:

§ 107.209 Determination.

(a) Upon consideration of the application and other relevant information received, the Associate

Administrator for Hazardous Materials Safety issues a determination.

(b) Notwithstanding that an application for a determination has not been filed under § 107.203, the Associate Administrator for Hazardous Materials Safety, on his or her own initiative, may issue a determination as to whether a particular State or political subdivision or Indian tribe requirement is preempted under the Act or the regulations issued under the Act.

(c) The determination includes a written statement setting forth the relevant facts and the legal basis for the determination and provides that any person aggrieved thereby may file an appeal with the Administrator, RSPA.

(d) The Associate Administrator for Hazardous Materials Safety serves a copy of the determination upon the applicant, any other person who participated in the proceeding, and upon any other person readily identifiable by the Associate Administrator as one who is affected by the determination. A copy of each determination is placed on file in the public docket. The Associate Administrator may publish the determination or notice of the determination in the Federal Register.

(e) A determination issued under this section constitutes an administrative determination as to whether a particular requirement of a State or political subdivision or Indian tribe is preempted under the Act or regulations issued thereunder. The fact that a determination has not been issued under this section with respect to a particular requirement of a State or political subdivision or Indian tribe carries no implication as to whether the requirement is preempted under the Act or regulations issued thereunder.

§ 107.211 [Amended]

15. In § 107.211, remove the word "ruling" each time it appears and replace it with the word "determination."

§ 107.215 [Amended]

16. In the heading preceding § 107.215 remove the word "Non-Preemption" and add, in its place, the words "Waiver of Preemption."

17. In § 107.215, paragraph (a) is revised to read as follows:

§ 107.215 Application.

(a) Any State or political subdivision or Indian tribe may apply to the Associate Administrator for Hazardous Materials Safety for a waiver of preemption with respect to any requirement that the State or political subdivision or Indian tribe acknowledges to be preempted by

section 105(a)(4) or section 105(b) of the Act or § 107.202. The Associate Administrator may waive preemption with respect to such requirement upon a determination that such requirement—

(1) Affords an equal or greater level of protection to the public than is afforded by the requirements of the Act or regulations issued under the Act, and

(2) Does not unreasonably burden commerce.

18. In § 107.215(b) remove the word "nonpreemption" and, add in its place, the words "waiver of preemption."

19. In § 107.215(b) (4) and (5) remove the word "inconsistent" and add, in its place, the word "preemption."

§ 107.219 [Amended]

20. In § 107.219(c), (d) and (e) remove the word "non-preemption" and add, in its place, the words "waiver of preemption."

21. In § 107.221, paragraphs (b) and (e) are revised to read as follows:

§ 107.221 Determination and Order.

(b) The Associate Administrator for Hazardous Materials Safety may issue a waiver of preemption order only if he finds that the State or political subdivision or Indian tribe requirement affords the public a level of safety at least equal to that afforded by the requirements of the Act and the regulations issued under the Act and does not unreasonably burden commerce. In determining whether the State or political subdivision or Indian tribe requirement unreasonably burdens commerce, the Associate Administrator considers the following factors:

(e) An order issued under this section constitutes an administrative determination whether a particular requirement of a State or political subdivision or Indian tribe is preempted under the Act or any regulations issued thereunder, or whether preemption is waived.

22. Section 107.227 is added to read as follows:

§ 107.227 Judicial Review.

A party to a proceeding under § 107.203(a) or § 107.215(a) may seek review by the appropriate district court of the United States of a decision of the Administrator under such proceeding only by filing a petition with such court within 60 days after such decision becomes final.

Subpart D—Enforcement

23. The authority citation for Subpart D—Enforcement is amended to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1808, and 1809; 49 CFR 1.53 and part 1, App. A.

24. Section 107.299 is amended by removing the definition of "knowledge" and "knowingly" and by adding the following new definition.

§ 107.299 Definitions.

Acting knowingly means acting or failing to act while (1) having actual knowledge of the facts giving rise to the violation, or (2) having such knowledge as a reasonable person acting in the circumstances and exercising due care would have had.

§ 107.311 [Amended]

25. In § 107.311 (a) and (b)(1) after the word "Act," insert the words "an order issued under the Act,".

26. Section 107.329 is revised to read as follows:

§ 107.329 Maximum penalties.

(a) A person who knowingly violates a requirement of the Act, an order issued under the Act, this subchapter, Subchapter C of this chapter, or an exemption issued under Subchapter B of this chapter applicable to the transporting of hazardous materials or the causing of them to be transported or shipped is liable for a civil penalty of not more than \$25,000 and not less than \$250 for each violation. When the violation is a continuing one, each day of the violation constitutes a separate offense.

(b) A person who knowingly violates a requirement of the Act, an order issued under the Act, this subchapter, subchapter C of this chapter, or an exemption issued under subchapter B of this chapter applicable to the manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container which is represented, marked, certified or sold by that person as being qualified for use in the transportation of hazardous materials in commerce is liable for a civil penalty of not more than \$25,000 and not less than \$250 for each violation.

27. Section 107.333 is revised to read as follows:

§ 107.333 Criminal penalties generally.

A person who knowingly violates § 171.2(g) or willfully violates a provision of the Act or an order or regulation issued under the Act shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.

28. Section 107.336 is added to part 107 to read as follows:

§ 107.336 Limitation on fines and penalties.

If a State or political subdivision or Indian tribe assesses any fine or penalty determined by the Secretary to be appropriate for a violation concerning a subject listed in § 107.202(a), no additional fine or penalty may be assessed for such violation by any other authority.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

29. The authority citation for part 171 is revised to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, 1818; 49 CFR part 1.

30. Section 171.1 is amended by adding a new paragraph (c) to read as follows:

§ 171.1 Purpose and scope.

(c) Any person who, under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government, transports, or causes to be transported or shipped, a hazardous material or manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person as qualified for use in the transportation of hazardous materials shall be subject to and comply with all provisions of the Act, all orders and regulations issued under the Act, and all other substantive and procedural requirements of Federal, State, and local governments and Indian tribes (except any such requirements that have been preempted by the Act or any other Federal law), in the same manner and to the same extent as any person engaged in such activities that are in or affect commerce is subject to such provisions, orders, regulations, and requirements.

31. Section 171.2 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 171.2 General requirements.

(f) No person shall, by marking or otherwise, represent that—

(1) A container or package for the transportation of hazardous materials is safe, certified, or in compliance with the requirements of this title unless it meets the requirements of all applicable regulations issued under the Act; or

(2) A hazardous material is present in a package, container, motor vehicle, rail freight car, aircraft, or vessel, if the hazardous material is not present.

(g) No person shall unlawfully alter, remove, deface, destroy, or otherwise tamper with—

(1) Any marking label, placard, or description on a document required by the Act, or a regulation issued under the Act; or

(2) Any package, container, motor vehicle, rail freight car, aircraft, or vessel used for the transportation of hazardous materials.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

32. The authority citation for part 173 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR part 1, unless otherwise noted.

§ 173.4 [Amended]

33. In § 173.4, paragraph (b) is amended by removing the words "After May 2, 1991, a package containing a radioactive material may not be offered for transportation aboard a passenger-carrying aircraft unless that material is intended for use in, or incident to, research, medical diagnosis or treatment."

§ 173.421-1 [Amended]

34. In § 173.421-1, paragraph (b)(2) is amended by removing the words "After May 2, 1991, it is also necessary to comply with §§ 173.448(f) and 175.700(c) of this subchapter."

§ 173.421-2 [Amended]

35. In § 173.421-2, paragraph (d) is removed.

Issued in Washington, DC, on February 20, 1991, under authority delegated in 49 CFR 1.53.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

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